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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/653,518	09/02/2003	Kurt D. Beauregard	BEAU-0001	3877
23550	7590	11/30/2004	EXAMINER	
HOFFMAN WARNICK & D'ALESSANDRO, LLC			HAYES, BRET C	
3 E-COMM SQUARE			ART UNIT	
ALBANY, NY 12207			PAPER NUMBER	

3644

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/653,518

Applicant(s)

BEAUREGARD, KURT D. 

Examiner

Bret C Hayes

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-14, 16, 17, 19 and 21 is/are rejected.
- 7) ☒ Claim(s) 7, 15 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

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|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 – 6, 8 – 14, 16 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,000,578 to Souza.

3. Re – claims 1 and 9, Souza discloses the claimed invention including: a support 30 for a trap 10, the support 30 comprising: a base 32; a positioning member 60 extending from the base for positioning a first jaw 18 of the trap 10; and a retractable engaging member 72 extending from the base 32 for engaging a second jaw 22 of the trap 10; re – claims 2 and 10, Souza further discloses the base 32 including a plurality of legs 38; re – claims 3 and 11, Souza further discloses the base 32 being freestanding; re – claims 4 and 12, Souza further discloses the member 60 including a plurality of trap contacting legs 50; re – claims 5 and 13, Souza further discloses each leg 50 extending from the base 32 at an angle; re – claims 6 and 14, Souza further discloses the member 72 being movable between a first trap engaging position and a second retracted position, see Fig. 3, for example; and re – claim 21, Souza discloses a support 30 for use with a body-gripping trap 10, the support 30 comprising: a freestanding base 32; means for positioning 60 the trap 10 relative to the base 32; and means for holding 72, 74 the trap 10 to the base 32.

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Art Unit: 3644

4. Re – claims 8 and 16, Souza, by way of incorporation by reference of US Patent No. 3,010,245 to Conibear discloses the claimed limitations of such a trap.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Souza.
7. Concerning method claims 17 and 19, in view of the structure disclosed by Souza, the method of operating the device would have been inherent, since it is the normal and logical manner in which the device could be used.

***Allowable Subject Matter***

8. Claims 7, 15 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
9. The reasons for indicating allowable subject matter can be found in the previous office action mailed, 22 JUN 2004.
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***Response to Arguments***

10. Applicant's arguments filed 22 SEP 2004 have been fully considered but they are not persuasive.

11. The functional recitation that "a retractable engaging member extending from the base for engaging a second jaw of the trap without hindering movement of the second jaw to a closed position", *emphasis added*, has not been given any patentable weight because it is narrative in form. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC § 112, 6<sup>th</sup> paragraph, and must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. *In re Fuller*, 1929 C.D. 172; 388 O.G. 279.

***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Art Unit: 3644

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (703) 305 – 7421. The fax number is (703) 872 – 9306.

bh

11/29/04

A handwritten signature in black ink, appearing to read 'Teri Luu', with a stylized flourish at the end.

**TERI PHAM LUU  
SUPERVISORY  
PRIMARY EXAMINER**